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THE MORAL LAW

THE ESSENTIAL ELEMENT OF AMERICAN LIBERTY.

THE SUBSTANCE OF A LECTURE,

TO THE

BRIDGEPORT LYCEUM,

READ APRIL 19, 1839,

✓
BY N. HEWIT.

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LECTURE.

The changes which happen in communities, either for the better or the worse, in any particular age, proceed from causes which began to operate in the past. One generation sows, and the next reaps. The most important of these changes respect opinion and belief: for the general mind and character of a people shape those events which affect their common welfare.

Opinions, which originate and lead on great civil and religious changes in states and nations, under the ordinary course of Providence, are, at the first, entertained by a few; not unfrequently by one only. They spread slowly; and in the face of resistance and reproach. They are promoted at the expense of hard labor, and many dangers and losses of their authors and abettors. But seldom does the planter of a prolific thought, live to see it a great tree, and find rest from his labors beneath the shadow of its branches, and a rich reward from its fruit. But although new and revolutionary doctrines are of slow growth, still they grow; and with accelerated motion as they advance. Resistance slackens; for it is wearisome to be long on the defensive merely. To resist and defend is a negative good; to advance and to obtain is positive, and therefore inviting and inspiring. The best that defendants can gain by their labor and hardship is merely not to lose, and every defection from their ranks is disheartening, and lessens the means of further resistance; whilst every convert to the new party is every way great gain. Hence all innovators, by perseverance, ultimately succeed.

It becomes now a matter of the highest moment to the coming generation, for their friends in this, to keep a watchful eye on the current opinions of the present day. No matter by whom, or in what form, or for what professed end, doctrines concerning the sun-

damantal concerns of man are brought forward and thrown into circulation. They merit the strictest scrutiny ; for they are either true or false, good or bad, and if not properly disposed of, and in season, the next age will rue our negligence.

Induced by these reflections, I submit with freedom to your consideration, my thoughts on the notion of *self-sovereignty*, advocated by many in our times, as one of the essential attributes of a freeman. By self-sovereignty, as this phrase is employed by those who harbor and scatter dangerous opinions, is meant that man by nature is the supreme lord of himself, and cannot rightfully be bound by any obligation or law, otherwise than by his free consent. Under the shelter of the abused name of liberty, this false and pernicious dogma is propagated in a thousand forms.

On the present occasion, but one or two instances of the introduction and partial adoption of this dogma, will be stated and illustrated ; and this in rather a desultory manner. Preparatory to their specification, it will subserve my design briefly to advert to the opinions and belief of our forefathers, as their sentiments appear in their most deliberate and momentous declarations and acts. They asserted their civil rights, and claimed their political independence of the mother country, not because they were by nature invested with self-supremacy, but because they were the dependent creatures of God, and from him had received all the rights and liberties necessary to their well-being. "We hold," they say, "these truths to be self-evident : That all men are created equal : that they are endowed by their Creator with certain unalienable rights : that among these, are life, liberty, and the pursuit of happiness." The sages and heroes of '76, regarded American liberty as the legitimate daughter of reason and piety. They held the rights of man as the gifts of God, and in the light of self-evident truth, saw them descending from heaven ; and as the children of God, claimed them, fresh and fair, from the hands of their maker. Justice and reason, not will and passion, led them to assert their civil freedom and political independence. It was not will, but reason ; it was not passion, but duty, and both sanctioned by piety, which prompted, and wrought out the American Revolution. On no other grounds could they have justified themselves, nor can we now justify them, from perfidy and treason. The blood shed in the war of the revolution, cries to God for vengeance, if his laws cannot be plead in their defence. They claimed not a lawless will—an irresponsible self-sovereignty. If so,

why needed they adduce self-evident truth? Why appeal to the charter of rights, under the seal of the Lord of all? They might have said, "It is our sovereign will and pleasure to be free," and said no more. This is the style royal; the set form of speech for absolute monarchs. Our will is reason, and our might is justice. Had these been the sentiments of our patriot fathers, they would have been savages; nay, worse than these: perfidious traitors to their king and country. The moral and civil code of savages and villains, is simple and short; will and might are the reason and the rule. Had our fathers assumed the dogma that man can be bound by his voluntary consent only, and that these obligations may be dissolved at will, they would not have given reasons for their refusing of submission to the British crown: they would not have used arguments in justification of their revolt from it. He who resorts to reason—who appeals to justice and to God in defence of his declarations and acts, thereby renounces all claim to sovereignty. The Declaration of Independence, it is hence most evident, repudiates the doctrine of man's self-sovereignty, and puts his subjection to truth and righteousness, and his allegiance to the throne of God, as the corner-stone of American Liberty.

The subsequent proceedings of our predecessors, throughout the war of the revolution, and in the constitution, organization, and administration of the General and State Governments proceeded on the same principles. In no public acts of theirs, whether organical, legislative, executive or judicial, can the atheistical and brutal dogma be found, that either the citizens singly, or the nation collectively, are irresponsible and absolute sovereigns. Suppose now that the Government of the United States should proclaim to the nations of the earth, that it asserted for itself the prerogative of absolute sovereignty—a lawless will, and its irresponsible exercise, regardless of the law of nature and of nations—would not the human race with one voice, denounce us as a horde of pirates, and the enemies of mankind? What validity would there be in our treaties, or security in our promises? In short, how can society exist at all, and in its rudest state, if the individuals composing it claim, each one for himself, the absolute dominion over himself, to will and act according to his pleasure? The first self-evident truth mentioned in the Declaration of Independence, "that all men are created equal," which is the theoretic axiom of our civil polity, necessarily implies the reciprocal relation of each to all, and the corresponding duties of that relation.

“Thou shalt love thy neighbor as thyself,” is a moral rule resulting directly and unavoidably from the axiom, “men are equal.”

In our time, this notion of self-sovereignty, so much at war with the true spirit of our government and laws, as well as with truth and righteousness, has crept in, and is making progress with frightful rapidity. Under the current phrase “the will of the people is supreme law,” the implication that there is no law to govern the will of the people, is caught up and appropriated to individuals singly, as well as to the people collectively. Hence the strong tendency in the popular mind to abridge the authority of law, and to narrow down its dominion to the fewest possible cases. The efforts making to subject all judges and other law officers to popular election, and to shorten their term of office in order to augment their immediate dependence on the will of the people, spring from the same bitter root. All must have observed the rapid growth of an unwillingness to convict and punish offenders against criminal law; and also to soften down all punishment, and even to convert punishment into benefit to the criminal himself. If this tenderness for villains sprung from genuine benevolence to mankind, it would be a weakness only; but proceeding from lawlessness and indifference to the turpitude of crimes against the peace and safety of society, it is a proof of the extent and depth of false and barbarous principles.

I come to the first of the specifications mentioned, as evidential of the existence and operation of that dogma of self-sovereignty, which I have exploded. It is, that electors have the absolute right of voting for whomsoever they please, without respect to any other law of choice in selecting the officers of government, than their mere will and pleasure.

That this claim of sovereignty in voting is contrary to the constitution and laws of our country, appears by the qualifications for particular officers specified both in the constitution of the General and State Governments, and by their statutes. The President of the United States, for example, must be a native, and of a certain age; Senators and Members of the House of Representatives in like manner, must have given qualifications before they can be candidates for election. In Connecticut, no member of the legislature can hold an office of the General Government. The freeman’s oath, and the statute against bribery at elections, limit and define the rights of electors. But all these limitations of the choice of freemen in selecting their rulers are inconsistent with the notion of absolute sovereignty

as free voters. The right of voting is restricted, and is not therefore absolute. Every elector is bound by law and his oath, to vote for those men who have the qualities specified therein, and of course he is confined by his obligations to his oath and to his country, to vote, not just as he *pleases*, but just as he *ought*. He is then not at liberty to consult his will, but to do his duty. Think a moment of the consequences which necessarily follow the supposition that every freeman has the prerogative of absolute choice in selecting the officers of Government. In this case, as his choice is unlimited, he may vote for foreigners, Indians, slaves, women and children : nay, for mules, and cats, and dogs. For however ridiculous and monstrous this inference may appear, it is no more than a just and necessary consequence from the assumption that freemen are at perfect liberty to vote for whom they please.

That freedom of electing our rulers, and the personal right of choice which is secured to us by that civil and political liberty which is our birth-right and our glory, is a legal and moral attribute. To exercise it, men must obey the laws, and act conscientiously. A lawless will, and an irresponsible self-sovereignty are subversive of all social order, alike destructive of law and liberty.

Closely allied to the notion of the absolute right of voting for officers as each one pleases, and growing out of it, is the practice of subjecting principles of law and policy to the tribunal of the ballot box, as the court of last resort, whose decisions are final and imperative.—There are principles of policy merely—questions of discretion and prudence about current affairs, not involving fundamental principles of duty and order, of law and authority, which may be submitted to the popular will at each recurring election. But the fault in question goes deeper. It is now maintained that every subject of public interest should be brought, as soon as may be, to the ballot box, and there decided. Now nothing is plainer, than that the theory of our free institutions embraces fixed principles, which are embodied in the constitution, and which cannot be altered except in a peculiar and specific way, differing essentially from that in which the will of the people is manifested at the stated election of our rulers. Two things are now united in practice, which the constitution carefully separates. For at the election of a President of the United States, as at present conducted, not only is a particular person selected, but also constitutional and other fundamental questions are decided, and the decision is expressed by the choice of that officer. Thus all the

fundamental doctrines of our government and laws are subjected to the caprice and hazards of violent partizan elections. The authority of the Supreme Court of the United States extends to jurisdiction over the acts of Congress, and may set them aside whenever they are, in the judgment of the Court unconstitutional. Hence, if by the ballot box men are sent to Congress, having the will of the people on constitutional questions to govern their legislation, all their acts must pass under the revision of the Supreme Court, and stand or fall by its supreme and final judgment. Of course the will of the people, as expressed at ordinary elections, is not supreme law.— Otherwise, it would govern the Supreme Court, as well as the other branches of the government. This Court holds the popular will in check, and makes it feel its subjection to fixed principles and national law. Hence the growing hostility to that Court. It is in the way of that boundless liberty which is the ruling passion of the times.— It is moreover, a barrier to the selfish and lawless schemes of parties, and of one State against another. As the interpreter of treaties, it is the guardian of the honor and faith of the nation. Foreigners may find justice there. The power of this Court to resist the tide of popular feeling, and to enforce the faith of the nation, was brought to bear in the great case of the Cherokees. Had the upright and legal decision of the Court been faithfully executed, the Florida war would have never occurred. If the Indians could have had justice according to law, and their treaties with us, they would have never appealed to the rifle and tomahawk. We see in this instance the consequences of making the will of the people supreme law, and the ballot box the organ of its publication.

The other specification of the application of the dogma of self-sovereignty asserted in our day, is "the right of instruction," according to the famous Virginia Resolutions. This doctrine grows out of the popular axiom, that the will of the people is supreme law. But it is subversive of a representative government. For in a representative government, the constituted authorities are in the place and room of the people, and hold for the time being all their power. They represent the people; and of course the people are merged in them. The sovereignty of the whole people passes by delegation from themselves to their substitutes, and there remains until the period of a new election returns; and when it returns, they merely furnish persons to fill offices, and not both the offices and the persons to fill them. When the people of the United States adopted the constitu-

tion they transferred their sovereignty to the officers created by that instrument, reserving to themselves the right of filling a part of those offices by persons of the requisite qualifications, selected by themselves, and the remainder by those thus selected. The whole people thus appear and act in the government by delegation, by representation. As individuals, or as towns, counties and States; as the north or the south, the east or the west; as free or as slave-holding; as commercial, agricultural or mechanical, the whole people collectively, and each and every one singly, gave up their power and will to the authorities created by the constitution. These authorities hold "the delegated will of the nation." To them the people are subject, and they are bound to obey them. Washington, in his farewell address, says: "The basis of our political system, is the right of the people to make and alter their constitution of government: but the constitution which at any time exists, till changed by an explicit and authentic act of the whole people, is sacredly obligatory upon all. The very idea of the power and the right of the people to establish government, presupposes *the duty* of every individual to obey the established government."

Now, it appears to me, the right of instructing the persons who fill either of the departments of government, whether executive, legislative or judicial, is nothing short of a resumption, by the people who claim this right, of those powers which they have transferred to these constituted authorities, and it amounts to an abrogation of the constitution. If the people speak for themselves and exert their own authority, they put aside, in the case, their representatives. He that speaks for himself has no use for an attorney; he that acts for himself, is his own agent and factor; he that appears for himself, needs not a delegate. It is plain then, that in those cases where the people, or any part of them, impose their judgment or will on their rulers for the purpose of directing and controlling them, they take back the powers they had given them, and destroy their representative character, and render them the mere messengers and organs of their will. In this light the subject appeared to Washington, who in his address beforementioned, says: "All obstructions to the execution of the laws, all combinations and associations, under whatever plausible character, with the real design to direct, control, counteract, or awe the regular deliberation and action of the constituted authorities, are destructive of this fundamental principle, [see previous quotation,] and of fatal tendency. They serve to organize fac-

tion, to give it an artificial and extraordinary force, to put in the place of the *delegated will* of the nation, the will of a party."

But it is maintained by the abettors of the right of instruction, that the United States Senate is the representative of the several States in their capacity as States, and therefore the Legislatures, which choose the Senators, are their immediate constituents, and as their Senators are their representatives, it is necessary to instruct them, that they may represent them justly. All that has been adduced on the subject generally, may, in answer to this, be appositely and conclusively referred to. If Senators are the representatives of States, they are as much in the room and stead of the States, as the members of the lower House are in the room and stead of the people; and hence the right of instruction, if it exist in the former case, ought by parity of reason, to be admitted in the latter.

If the Senate may be instructed by the Legislatures of the States, and be bound by them, they are not representatives. They are mere messengers, agents, or factors. They are no longer a deliberative assembly, but an executive organ to ratify the deliberative acts of other assemblies. In this case Senators are in the same grade with marshals, and sheriffs, who are the functionaries of other's wills, without any of their own, except that of implicit obedience to the mandates of authority. In short, the doctrine of instruction annihilates the Senate as a legislative body, and thus dismembers Congress, and fundamentally subverts the government of the United States, according to the constitution.

The right of instruction is, moreover, contrary to the constitution in another respect. According to it, each Senator is not only the representative of that State by which he is chosen, but also of every other State of the Union. The Senators from Connecticut, for example, have the same jurisdiction over South Carolina or Virginia, as they have over their own State. The Senate is a unity. Both jointly and severally the Senators have concurrent authority over each and every State of the Union. Virginia has as much interest in the Senators of Connecticut as in her own, and is as much subjected to their power. Hence it follows, that if Virginia has the right of instructing her own Senators, as she claims, she ought to go further, and instruct ours also, and even the whole. It is plain, therefore, that the doctrine of instruction, carried out logically to its results, dissolves that union of all the States in one body politic, which the constitution intends, and is virtually a dissolution of the Union.

The doctrine of instruction is not only contrary to the theory of our government, but it is inconsistent with all government, and at war with a social state under any possible form. For the notion of society is the union of several individuals in some one or more respects, where that which was before separate and peculiar to each individual is given up to be the common property of all. If, for example, the owner of a field, for certain valuable considerations, admits his neighbors to use it in common with himself for pasturage, or a highway, he gives up what was before his own and at his own sole disposal, to be the joint and common property of all.— Suppose now one of his neighbors gives the original owner instructions concerning the way and manner in which this common field, this social property, shall be used, both by him and the others of the company, it is plain that he steps aside from his place as one of the partners, and usurps the exclusive control of that which is not his exclusively. Every other partner has as good a right to say how the common field shall be used, and to insist on a compliance of the rest to his will. In such a case, society in the use of the field is impossible. In like manner as to all the joint and common affairs and interests of states and nations, individuals must merge their peculiar and several wills in one that shall be common to all, and binding on all, or society is impossible. In our social state, the axiom of union is that in all ordinary cases the will of the majority shall govern. As to fundamental principles, like those which are embodied in the constitution, the will of two thirds is necessary. It is plain, therefore, that the will of the minority must submit, or our union is at an end. Hence the notion of our political union may be expressed thus: the majority is the representative of the whole. If now constituents may rightfully instruct their representatives, why may not the minority instruct the majority? Thus this doctrine of instruction runs headlong to absurdity and all confusion.

Unaccustomed, gentlemen, to speak on secular topics, I have with some embarrassment ventured to offer my views on a fundamental question of national policy. You will receive them with candor.— If our young men, on whom the future hopes of our country under Divine Providence depend, wish to be the supporters of order and the friends of true liberty, they must study the first principles of morals. Justice is the cement of society, for it is benevolence acting by rule. “Thou shalt love thy neighbor as thyself,” is the equitable rule of justice, and the basis of society. A rule implies and requires

a, Ruler. As now this law of morals forms and regulates society, it is anterior both to society and its laws, and of course its author and protector. God, therefore, is that Ruler. So long as his authority is felt, so long the elements of society will maintain their life and vigor. The fear of God then is the foundation of all order. Government, law, liberty, peace, all flow from piety to God.

“Of all the dispositions and habits which lead to political prosperity,” said Washington in his farewell address, “religion and morality are indispensable supports. In vain would that man claim the tribute of patriotism, who should labor to subvert these great pillars of human happiness, these firmest props of the duties of men and citizens. The politician, equally with the pious man, ought to respect and cherish them. A volume could not trace all their connexions with private and public felicity. Let it simply be asked, where is the security for property, for reputation, for life, if the sense of religious obligation desert the oaths, which are the instruments of investigation in courts of justice? And let us with caution indulge the supposition, *that morality can be maintained without religion*. Whatever may be conceded to the influence of refined education on minds of peculiar structure, reason and experience both forbid us to expect that national morality can prevail to the exclusion of religious principle. It is substantially true, that virtue or morality is a necessary spring of popular government. The rule extends indeed, with more or less force, to every species of free government. Who, then, that is a sincere friend to it, can look with indifference upon attempts to shake the foundation of the fabric?”

Note.—“Judge Hopkins, of Pa., says, that the last words the late Chief Justice Marshall spoke to him, about a week before he died, were these: ‘The Virginia doctrines about the right of instruction, are incompatible not only with the government of the United States, but with any government.’”—*Alexandria Gazette*.

New York Spectator, June 30th, 1836.

